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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 421

THE SECOND NATIONAL BANK OF ST. CLAIRSVILLE, OHIO,

Appellant,

vs.

HOMER J. FINDLEY, AS TREASURER OF BELMONT COUNTY, OHIO, AND E. E. TAYLOR, AS AUDITOR OF BELMONT COUNTY, OHIO,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF APPELLANT ANSWERING BRIEF OF APPELLEES IN OPPOSITION TO THE APPEAL TO THIS COURT.

GEORGE THORNBURG,
EARL R. LEWIS,
Counsel for Appellant.

THORNBURG & LEWIS,
Of Counsel.

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Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF APPELLANT ANSWERING BRIEF OF APPELLEES IN OPPOSITION TO THE APPEAL TO THIS COURT.

Facts of the Case.

The County Auditor of Belmont County, Ohio, the assessing officer under Ohio Law, listed and assessed taxes in the name of and against Appellant, The Second National Bank of St. Clairsville, Ohio, on the County Auditor's Tax List and the County Treasurer's Tax Duplicate:

For the year 1928 in the sum of $6284.32
For the year 1929 in the sum of 7030.52
For the year 1930 in the sum of 4019.36

The tax, as entered on the Auditor's Tax List and the Treasurer's Tax Duplicate for the year 1929, as an example, in its pertinent parts, is as follows:

"Owner's Name	Value as Equalized by Assessor	Total Tax Due Dec., 1929	Total Tax 1929 and Delinquent Tax 1928	Penalty on December Tax
The Second National Bank...	260,390	3515.26	7030.52	703.05"

The assessments for the years 1928 and 1930 were exactly the same, except for differences in valuation and the amount of the tax and penalty.

These taxes were arrived at by computing the value of the capital, surplus and undivided profits of the bank, excluding real estate, and applying thereto the tax rate for each of the years in question, as shown by the testimony of County Auditor, E. E. Taylor, (R. pages 115 and 116; Statement of Jurisdiction, page 33½).

Believing these taxes to be illegal because they were taxes against the Bank on its net capital, surplus and undivided profits, after deducting real estate, instead of taxes against the shareholders on the value of their shares, and, therefore, in violation of Section 5219, Revised Statutes of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States, Appellant brought a suit in each of the years in question in the Common Pleas Court of Belmont County, Ohio, the trial court, to have said taxes decreed null and void and to enjoin the collection of the same.

When said taxes became delinquent, a penalty was imposed by the County Auditor and thereupon a statement of such delinquent taxes was filed with the County Recorder under a statute which thereby gave the county a lien on the real estate of the Appellant.

The suits to declare said taxes null and void and to enjoin their collection were commenced, and later the three

suits were consolidated into this one action by order of the Common Pleas Court of Belmont County, Ohio, the trial court, which court issued an injunction restraining the collection of said taxes and cancelled the lien on the real estate of Appellant. Thereupon the case was appealed to the Court of Appeals of Belmont County, Ohio, which enjoined Appellees from collecting said taxes and penalties and ordered the liens on the real estate of Appellant to be cancelled of record. Thereupon the case was certified by the Court of Appeals to the Supreme Court of Ohio, which Court sustained that portion of the judgment of the Court of Appeals which cancelled the lien on the real estate but reversed that portion of the judgment which enjoined Appellees from collecting the tax and held the tax to be a valid tax. (*Union Savings Bank* v. *Pancoast, Treasurer, et al.*, 142 Ohio State 6).

Appellant, in its Third Amended Petition, upon which the case was heard, charged that the taxes in question:

> "were contrary to law and in violation of plaintiff's legal and constitutional rights in the following respects, to-wit:
>
> "(a) There is no Statute of Ohio, nor of the United States of America, authorizing or permitting the auditor to make said assessments of taxes against plaintiff.
>
> "(b) * * *.
>
> "(c) The Statutes of Ohio under authority of which said auditor and treasurer pretend to have assessed said taxes against plaintiff and to have the right to collect the same from plaintiff, respectively, are in violation of Section 5219, Revised Statutes of the United States of America, now Section 548 of Title 12 of the United States Code, and also in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States of America. * * *"

ARGUMENT.

1. National banks are taxable by State authority only in the manner Congress permits by Federal Statute (McCulloch v. Maryland, 4 Wheat., 316; Owensboro National Bank v. Owensboro (1899), 173 U. S. 664, 43 L. Ed. 850).

> "Section 5219, Revised Statutes, prescribes the full measure of the power of the several states to impose taxes upon national banking associations or their stockholders."—First National Bank of Gulfport, Miss., *v.* Adams, Revenue Agent (1922), 258 U. S. 362, 66 L. Ed. 661, 42 S. Ct. 323, overruling 123 Miss. 279, 85 So. 308.

Section 5219 of the Revised Statutes (Section 548, Title 12, United States Code) provides that:

> "The legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several states may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:
>
> "1. (a) The imposition by any state of any one of the above four forms of taxation shall be in lieu of the others, * * *"

Revised Statute, Section 5219, is set forth in full in "Addendum No. 1" hereto.

2. The State of Ohio, pursuant to the authority granted by the Federal Statute (R. S., Section 5219), has elected to tax the shares of the stockholders.

> General Code, Section 5408: "All the shares of the stockholders in an incorporated bank or banking asso-

ciation located in this state, incorporated or organized under the laws of the state or of the United States * * * shall be listed at the true value in money and taxed only in the city, ward or village where such bank is located."—(Throckmorton's Annotated Code of Ohio, Baldwin's Revision, 1930 Edition).

General Code, Section 5408, in full, to Section 5414, inclusive, and General Code 5672 and 5673 (Throckmorton's Annotated Code of Ohio, Baldwin's Revision, 1930 Edition), all dealing with the taxation of banks, are set forth in "Addendum No. 2" hereof; and the pertinent tax statutes of Ohio of general application to all property, including bank shares, being General Code, Sections 2583, 2585, 5367 and 5579 (Throckmorton's Annotated Code of Ohio, Baldwin's Revision, 1930 Edition), in their pertinent parts, are set forth in "Addendum No. 3" hereof.

The Supreme Court of Ohio held that:

"2. The provisions of Section 5672, General Code, as in effect prior to January 1, 1931, making the taxes assessed on shares of stock in a bank or banking association a lien on such shares until paid and imposing upon such bank or banking association the duty to collect the taxes due upon its shares of stock from the owners thereof and pay the same to the treasurer of the county in which such bank or banking association is located and imposing upon any bank or banking association failing to pay such taxes a liability by way of penalty for the gross amount of taxes due from all the owners of the shares of stock do not impose a tax on the bank and are not violative of the provisions of Section 548 of Title 12 of the Code of Laws of the United States (Section 5219, Revised Statutes of the United States) prescribing the manner in which such taxes affecting national banks may be levied and assessed."

The Supreme Court of Ohio also held, in paragraph number 3 of the Syllabus, that the tax was placed:

> "on the tax duplicate against the bank instead of the respective owners of the shares of stock"

but that it

> "does not constitute the same a lien on the real estate of the bank."

The Supreme Court of Ohio also held that:

> "4. The apportionment of the aggregate amount of taxes due on bank shares among the respective owners thereof is not a prerequisite to the enforcement of the liability of a bank to collect the taxes due upon its shares of stock and pay same to the treasurer of the county by the provisions of Section 5672, General Code."

3. Questions presented on this appeal.

There is thus drawn in question:

A. *The validity of the Bank Tax Statutes of Ohio, as applied by the County Auditor and County Treasurer and as construed by the Supreme Court of Ohio, under the claim that the same are contrary to and in violation of Section 5219, Revised Statutes of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.* And the decision of the Supreme Court of Ohio sustained the Ohio Statute as construed by the County Auditor and the County Treasurer.

B. *And there is also involved in this appeal the validity of the taxes found by the Supreme Court of Ohio to be assessed against Appellant instead of against the stockholders of Appellant on the value of their shares.*

And these questions involved in this appeal are not solely the validity of taxes or tax assessments but also the validity

of the Ohio Statute under authority of which the County Auditor pretended to act. Those questions were presented in the Court of Common Pleas, the trial court, and also in the Court of Appeals and in the Supreme Court of Ohio, and are now raised in this case on appeal.

4. Jurisdiction of this Court to entertain this appeal.

A. *Jurisdiction to entertain an appeal from the decision of a state court on the ground that a State Statute, as construed, is repugnant to the Constitution of the United States. Colorado National Bank of Denver* v. *Bedford* (1940), 310 U. S. 41. The language of the Syllabus in that case is as follows:

> "1. This case is appealable under Judicial Code, Section 237(a) because a state statute affecting national banks was upheld by a state court over the objection of conflict with the Federal Law and Constitution."

To the same effect, see *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664.

In the case of *Indiana, Ex Rel., Anderson* v. *Brand, Trustee*, (1938), 303 U. S. 98, this Court held as follows:

> "1. Where a state court does not decide a cause upon an independent state ground but deeming a Federal question to be before it actually entertains and decides that question adversely to the Federal right asserted, this court has jurisdiction to review the judgment if final."

This Court has also held that:

> "In the exercise of the appellate jurisdiction of the Federal Supreme Court over state courts, the former court is bound by the construction of a state law adopted by its court of last resort. But the Federal Supreme Court, while bound by the construction of a state statute adopted by the state court of last resort,

is not concluded by its reasoning but must exercise independent judgment when called upon to determine the Federal question whether the action, as construed and applied, is repugnant to the restrictions of the Federal Constitution."—Ward *v.* Krinsky (1922), 259 U. S. 502, 42 S. Ct. 529, 66 L. Ed. 1033, 28 A. L. R. 1207.

"Where the validity of a statute of California, as construed by the California courts, was drawn in question on the ground of its being repugnant to the Constitution of the United States, a judgment of the Supreme Court of California was properly before the United States Supreme Court on appeal."—Standard Oil Company of California *v.* Johnson (1942), 62 S. Ct. 1168, 86 L. Ed. 1611.

"The United States Supreme Court, in passing on constitutional questions regards substance and the statute attacked must be tested by its operation and effect."—Near *v.* The State of Minnesota (1931), 283 U. S. 697, 51 S. Ct. 625, 75 L. Ed. 1357.

B. *Jurisdiction to entertain an appeal from the decision of a state court on the ground that a State Statute, as construed, is repugnant to a Statute of the United States.*

"The United States Supreme Court had jurisdiction of writ of error to review a suit in the state court where the validity of a state statute providing for a tax on national bank shares is drawn in question as being repugnant to Section 548 of Title 12, United States Code (Revised Statutes, Section 5219)."—*First National Bank of Guthrie* v. *Anderson* (1926), 269 U. S. 341, 46 S. Ct. 135, 70 L. Ed. 295.

Characterization of a tax by a state court is not binding where a Federal right is concerned.—*Carpenter* v. *Shaw*, 280 U. S. 363, 50 S. Ct. 121, 74 L. Ed. 478.

Appeal may be had to the Supreme Court of the United States where a state statute, as construed and applied to a particular transaction, is repugnant to the Constitution or Laws of the United States.—*Dahnke-Walker Co.* v. *Bondurant* (1921, 257 U. S. 282, 42 S. Ct. 106, 66 L. Ed. 239.

Appellate jurisdiction of the United States Supreme Court has been invoked and exercised for the protection of a Federal claim of right under the Statutes of the United States, such as the National Banking Law.—*McCormick* v. *Market Bank* (1897), 165 U. S. 338, 17 S. Ct. 433, 41 L. Ed. 817.

5. Various contentions of appellees answered.

A. *Bank Tax Statutes of Ohio have been amended.*

While it is true that the Ohio Bank Tax Statutes involved in this case have been amended, yet they still provide for the taxation of bank shares under the designation of:

> "Investments * * * and other intangible property"—General Code, Section 5328-1 (Throckmorton's Ohio Code Annotated, 1940, Baldwin's Certified Revision).

The case of *District of Columbia* v. *Sweeney*, 310 U. S. 631, cited by Appellees as authority for the proposition that this Court will not entertain jurisdiction because the Statutes in question have been amended is not applicable to the circumstances in this case because the Statute in question in that case had been repealed and was not of public importance and of the great general interest which attaches to statutes affecting the taxation of national banks. In this connection it should also be noted that twenty-nine states, including Ohio, still have statutes authorizing the taxation of national bank shares.

B. *Claim that "Federal questions presented by the pleadings are not open to consideration by this Court."*

This claim has been answered above, but at this point it is sufficient to say that this Court, comparatively recently, held to the contrary in the case of *Colorado National Bank*

of Denver v. *Bedford*, 310 U. S. 41 (*supra*), in which case this Court held, as stated in the Syllabus:

> "1. This case is appealable under Judicial Code, Section 237(a) because a state statute affecting national banks was upheld by a state court over the objection of conflict with the Federal law and the Constitution."

That is precisely the situation presented by the record in this case.

C. *Appellees' argument concerning allegation of discriminatory taxation.*

Much of the argument contained on pages 5, 6, 7, 8, 9 and 10 of Appellees' Brief relates to the allegation of the Third Amended Petition concerning discriminatory taxation, but no evidence was introduced under that allegation and, therefore, the same has never been an issue in any one of the three state courts and, of course, is not an issue in this Court.

D. *Claim of "no substantial Federal question."*

Appellees claim that

> "no substantial Federal question is tendered by this appeal."

The question tendered by this appeal may be stated in a number of different ways, but, in essence, it is whether a State Statute of Ohio, construed by the Supreme Court of that state, to authorize the assessment of a tax in solido in the name of and against a national bank, based upon the bank's net capital, surplus and undivided profits, excluding its real estate, is authorized by the Federal Statute (Section 5219, Revised Statutes); and whether a duty can lawfully be imposed upon such bank to collect undetermined

amounts from its shareholders equal to the total tax assessed in solido against the bank and pay the same to the treasurer of the county in which the bank is located; and whether, if the bank fails to collect such tax so assessed against it, it then becomes liable by way of penalty imposed by the State Statute to pay the gross amount of said tax so assessed plus $100.00 a day penalty for delay in such payment.

These are the questions presented by the decision of the Supreme Court of Ohio from which this appeal is prosecuted and we believe the same are, from their very nature, Federal questions of substance, not only of vital interest to the litigants in this case, but equally of interest to national banks and state taxing authorities in all of those twenty-nine states which now tax the shares of national banks.

We believe that the questions here presented are substantial particularly because Section 5219, Revised Statutes, was amended in 1923, completely re-arranged in form to include the substance of the original statute and previous amendments thereof, plus many, but not all, interpretations placed thereon by this Court down through the intervening years, and amended again in 1926; and because since these radical changes of form in the statute by the amendments of 1923 and 1926 there have been but very few decisions of this Court applying such statute as so amended.

For these reasons we believe the record does present on this appeal Federal questions of real substance which should be decided by this Court as a guide for national banks and state taxing authorities in the twenty-nine states that tax the shares of national banks.

In this connection the case of *Owensboro National Bank* v. *Owensboro* (1899), 173 U. S. 664, is most pertinent, as is also the case of *First National Bank of Gulfport, Missis-*

sippi, v. *Adams, Revenue Agent* (1922), 258 U. S. 362, in which case it is held that:

> "1. Where the validity of a tax assessment by state officers is properly challenged and the matter comes before the Federal Supreme Court, that Court must determine the effect of the thing actually done. What might have been done under the local statute is not controlling.
>
> "2. A state tax assessed to a national bank, measured by the value of the bank's capital stock, surplus, undivided profits and other personal property, is not equivalent to one upon the shareholders in respect of their shares, and such tax is, therefore, invalid under United States Revised Statutes, Section 5219 (Title 12, Section 548, United States Code) which only permits the state, when assessing taxes, to include national bank shares in the valuation of the personal property of the owner or holder."

E. *Appellees claim "the bank's capital, surplus and undivided profits were a factor in determining the amount of the taxes."* (Page 11, Appellees Brief.)

The appellees' contention that the capital, surplus and undivided profits of the bank were only a factor in determining the amount of the taxes is answered by the testimony of one of the Appellees, E. E. Taylor, County Auditor, who testified as follows:

> "Q. While we are waiting, I might ask this, Mr. Taylor: The taxes which these records of your tax lists for the years in question show as having been assessed in the name of The Second National Bank of St. Clairsville were arrived at by multiplying the valuation, the ultimate valuation, by the tax rate for that particular year in question in the village of St. Clairsville, Ohio. Is that correct?
>
> * * * * * * *

"Court: All right, you may answer that.
"A. Yes, sir.
"Mr. Sedgwick: Exception.
"Q. That is the way the tax was arrived at?
"A. Sure.'"—(R. page ——.)

Appellees, on page 10 of their Brief, cite the case of *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103 at 105, to the effect that such testimony:

> "does not even give color to the contention that a tax so based is a tax on the property of the bank."

The distinguishing feature, however, between that case and the case at bar is that the assessments in that case were lawfully made against the shareholders with respect to their shares and, of course, the same did not constitute a tax against the bank with respect to the bank's property.

F. *Decision of Ohio Supreme Court based on the case of First National Bank of Aberdeen* v. *Chehalis County (1897), 166 U. S. 440.*

The Supreme Court of Ohio based its decision upon the last above-mentioned case but in so doing it overlooked the fact that in that case there were two statutes of the state of Washington involved, Section 21 and Section 23 of the Laws of Washington. Section 21 provided, in its pertinent parts, that:

> "Every • • • corporation • • • carrying on a general banking business in this state, whether the same has been organized under the banking laws of this state or the United States, • • • shall be assessed and taxed in the county • • • where such bank • • • is located, and not elsewhere, in the following manner: Annually at such times as provided for listing property for taxation every such bank • • • shall, by its accounting officer, furnish the county • • • assessor a statement verified by

oath, giving the amount of paid up capital stock, the amount of surplus or reserved fund and the amount of undivided profits of such bank * * *. The aggregate amount of capital, surplus and undivided profits shall be assessed and taxed as other like property in the state is assessed and taxed * * *."

The comment of the Court upon this section was that:

> "If this section stood alone, there might be ground for the contention that it contemplates taxation of the capital of the bank. But Section 23 of the Statutes provides that 'each bank and banking association shall be liable to pay any taxes assessed against them *as the agent of each of its shareholders, owners or owner,* under the provisions of this Act and may pay the same out of their individual profit account or charge the same to their expense account or to the accounts of such shareholders, owners or owner in proportion to their ownership.'" (Italics ours.)

This, of course, is a vastly different situation from that presented by the case at bar. Section 23 of the Statutes of Washington authorized the assessment to be made on the bank's capital, surplus and undivided profits in the name of the bank; but, by Section 23 of the Act, it provided that such an assessment is made in the name of the bank:

> "as the agent of each of its shareholders."

The Ohio Statutes, on the contrary, contain no provision authorizing the assessment of the tax in the name of and against the Bank. The only tax authorized by the Ohio Statutes is a tax on:

> "the shares of the stockholders";

consequently, the Supreme Court of Ohio was in error in holding that the case of *First National Bank of Aberdeen* v. *Chehalis County,* 166 U. S. 440, is decisive of the issues in this case.

Perhaps the fact that Section 5219, Revised Statutes, has been changed in form, although not in substance, since the decisions in the cases of *Owensboro National Bank* v. *Owensboro* (1899), 173 U. S. 664 (supra), and *First National Bank of Gulfport, Miss.*, v. *Adams, Revenue Agent,* (1922), 258 U. S. 362 (supra), led the Supreme Court of Ohio to ignore the holdings in the cases last above cited.

We believe the true rule applicable here is that stated by this Court in the case of *Schuylkill Trust Co.* v. *Pennsylvania,* (1935), 296 U. S. 102, in which case it was held, to quote from the Syllabus:

> "1. A corporation made liable in the first instance for a state tax on its shares which it may pay from its funds or collect from the shareholders but for which no lien is given either to the corporation or to the state has a standing to contest the validity of the tax.
>
> "2. Much weight attaches to the characterization of a state tax or the interpretation of a state law by the State Supreme Court, but where a Federal question is involved, this Court must determine for itself the true nature of the tax by ascertaining its operation and effect."

G. *Appellees' contention that Congress intended assessment of tax against the Bank "as agent of its shareholders."*

The argument is made that because this Court has held that Congress did not intend by the provisions of Revised Statutes, Section 5219, to prescribe to the states the method by which the tax should be collected (see *First National Bank* v. *Kentucky,* 76 U. S. 353 at 363; *Tappan* v. *Merchants National Bank,* 86 U. S. 490 at 505) or the place where the tax should be imposed (*Covington* v. *First National Bank,* 198 U. S. 100 at 112) or the method of collection and the appointment of the Bank as agent to return the shares of the shareholders for taxation and, as agent, to collect the

tax; that, therefore, the Statute authorized the states to make the Bank the agent of the shareholders for assessment of the taxes as well.

This, we submit, is an erroneous conclusion because if such had been the intention of Congress, it would have amended Revised Statutes, Section 5219, in 1923 and 1926 to unequivocally express such an intention. The Supreme Court of the United States had, years ago, held, in the case of *First National Bank of Aberdeen* v. *Chehalis County* (1897), 166 U. S. 440, that a state statute which made the bank the agent of the stockholders for assessment of a tax in the bank's name was legal; yet, notwithstanding that fact, when Congress amended Revised Statutes, Section 5219, it did not include such a provision and certainly the Statutes of Ohio enacted pursuant to the authority of Revised Statutes, Section 5219, do not include such a provision. There being no such provision in the State Law of Ohio, the Supreme Court of Ohio was in error in relying upon the authority of the case of *First National Bank of Aberdeen* v. *Chehalis County* (supra) and this, of course, presents a federal question not only of substance and of the nature which this Court is authorized to take jurisdiction but one which this Court should decide in the interest of the national banks and state taxing authorities in the twenty-nine states which tax the shares of national banks.

In summary, it should be said that the questions here presented not only deal with the validity of the tax and its assessment, but also raise and deal with the question of the validity of the State Statute of Ohio under which the tax was assessed because the same, as interpreted and applied, is repugnant to Section 5219 of the Revised Statutes and Section 1 of the Fourteenth Amendment to the Constitution of the United States. It should also be pointed out that the whole policy, as well as the provisions of the laws of Ohio with respect to the assessment of taxes, re-

quire that they be assessed to the owners thereof and such is shown to be the fact by the form used by the County Auditor in assessing the tax, which contains a column headed "owner."

Respectfully submitted,

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ADDENDUM No. 1.

Section 5219, United States Revised Statutes:

"State taxation. The legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several states may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any state of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in sub-division (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks: *Provided*, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed money capital within the meaning of this section.

"(c) In the case of a tax on or according to or measured by the net income of an association, the taxing state may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing state upon mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however*, that a state which imposes a tax on or according to or measured by the net income of, or a franchise or excise

tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other states and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the state on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the state on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares of any national banking association owned by nonresidents of any state shall be taxed by the taxing district or by the state where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

"4. The provisions of Section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the states of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (R. S. Sec. 5219; Mar. 4, 1923, c. 267, 42 Stat., 1499; Mar. 25, 1926, c. 88, 44 Stat., 223).

"(R. S. Sec. 5219 from Act June 3, 1864, c. 106, Sec. 41, 13 Stat., 111; Act Feb. 10, 1868, c. 7, 15 Stat., 34)."

ADDENDUM No. 2.

General Code, Section 5408 to Section 5414, inclusive, and General Code Section 5672 and Section 5673 (Throckmorton's Annotated Code of Ohio, Baldwin's Revision, 1930 Edition):

G. C., Section 5408: "*Shares or capital of banks, incorporated or unincorporated.* All the shares of the stockholders in an incorporated bank or banking association, located in this state, incorporated or organized under the laws of the state or of the United States, and all the shares of the stockholders in an unincorporated bank, located in this state, the capital stock of which is divided into shares held by the owners of such banks and the capital employed, or the property representing it, in an unincorporated bank the capital stock of which is not divided into shares, located in this state, shall be listed at the true value in money, and taxed only in the city, ward, or village where such bank is located."

G. C., Section 5409: "*Tax on real estate of bank.* The real estate of a bank or banking association shall be taxed in the place where it is located in like manner as the real estate of persons is taxed."

G. C., Section 5410: "*Names of stockholders and shares of each.* There shall be kept in the office at all times where the business of such bank or banking association is transacted, a full and correct list of the names and residences of the stockholders therein, and the number of shares held by each, which at all times during business hours shall be open to the inspection of all officers who are or may be authorized to list or assess the value of such shares for taxation."

G. C., Section 5411: "*Return made by cashier, etc., to auditor.* The cashier of each incorporated bank, and the cashier, manager or owner of each unincorporated bank, shall return to the auditor of the county in which such bank is located, between the first and second Mondays of May, annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads,

the resources and liabilities of such bank at the close of business on the Wednesday next preceding the said second Monday, with a full statement of the names and residences of the stockholders therein, the number of shares held by each and the par value of each share, and of the amount of capital employed by unincorporated banks, not divided into shares, and the name, residence and proportional interest of each owner of such bank."

G. C., Section 5412: "*Auditor to fix value of bank shares or property.* Upon receiving such report the county auditor shall fix the total value of the shares of such banks, and the value of the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, each according to their true value in money, and deduct from the aggregate sum so found, of each, the value of the real estate included in the statement of resources as it stands on the duplicate. Thereupon he shall make and transmit to the annual state board of equalization for banks a copy of the report so made by the cashier, manager or owner with the valuation of such shares or property representing capital employed as so fixed by the auditor."

G. C., Section 5413: "*When bank fails to make return.* If a bank fails to make and furnish to the county auditor the statement required, within the time herein fixed, the auditor shall examine the books of the bank; and also any officer or agent thereof under oath, with such other persons as he deems proper, and make such statement. The auditor shall have like powers, and the probate judge of the county shall exercise like powers, and perform like duties in aid of the auditor in the performance of his duties under this section, as are authorized by law in cases where the county auditor is informed, or has reason to believe, that any person has failed to make a return, or has made a false return for taxation. The statement so made out by the auditor shall stand as the statement required to be made by the cashier."

G. C., Section 5414: "*Penalty for making false return.* A bank officer who fails to make out and furnish to the county auditor the return required by section fifty-four hundred and eleven, or wilfully makes a false statement in such return, shall forfeit not more than one hundred dollars together with the costs and other expenses incurred by the auditor or other proper officer in obtaining such statement."

G. C., Section 5672: "*Tax a lien upon bank shares; collection of tax; penalty.* Taxes assessed on shares of stock, or the value thereof, of a bank or banking association, shall be a lien on such shares from the first Monday of May in each year until they are paid. It shall be the duty of every bank or banking association to collect the taxes due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county in which such bank or banking association is located, as other taxes are paid, and any bank or banking association failing to pay the said taxes as herein provided, shall be liable by way of penalty for the gross amount of the taxes *due from all the owners of the shares of stock*, and for an additional amount of one hundred dollars for every day of delay in the payment of said taxes."

G. C., Section 5673: "*Banks may deduct taxes paid from shareholders; when; lien.* Such bank or banking association paying to the treasurer of the county in which it is located, the taxes assessed upon its shares, in the hands of its shareholders respectively, as provided in the next preceding section, may deduct the amount thereof from dividends that are due or thereafter become due on such shares, and shall have a lien upon the shares of stock, and on all funds in its possession belonging to such shareholders, or which may at any time come into its possession, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest and such lien may be enforced in any appropriate manner."

ADDENDUM No. 3.

General Code, Sections 2583, 2585, 5367 and 5579 (Throckmorton's Annotated Code of Ohio, Baldwin's Revision, 1930 Edition):

G. C., Section 2583: "On or before the first Monday of August annually, the county auditor shall compile and make up in tabulation form and alphabetical order separate lists of the names of the several persons, companies, firms, partnerships, associations and corporations in whose names real or personal property has been listed in each township, etc. * * * and in a separate list the aggregate value of the personal property as listed therein and revised by him or the county board of revision, as the case may be, * * * If the name of the owner * * * of any item of personal property is unknown, the word 'unknown' shall be entered in the column of names opposite said * * * item. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the county auditor shall correct such lists in accordance with the additions and deductions ordered by the Tax Commission of Ohio and by the county board of revision and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's tax list and treasurer's duplicate of real and personal property for the current year * * *."

G. C., Section 2585: "*Tax to be levied on each tract.* After receiving from the auditor of state and from other officers and authorities legally empowered to determine the rates or amounts of taxes to be levied for the various purposes authorized by law, statements of the rates and sums to be levied for the current year, the county auditor shall forthwith proceed to determine the sums to be levied upon each tract and lot of real property, adding the taxes of any previous year that have been omitted, and upon the amount of personal property, moneys and credits listed in the county, in the

name of each person, company, or corporation which shall be assessed equally on all real or personal property subject to such taxes, and entered in one or more columns, in such manner and form as the auditor of state prescribes."

G. C., Section 5367: "Each county is hereby made the unit for the listing and assessing of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise for taxation purposes. The county auditor, in addition to his other duties, shall be the assessor for and shall list and value for taxation all such property within his county * * *."

G. C., Section 5579: "*Tax Commission shall direct and supervise assessment of property.* In addition to all other powers and duties vested in or imposed upon it by law, the Tax Commission of Ohio shall direct and supervise the assessment for taxation of all real and personal property in the state. County auditors shall, under the direction and supervision of the Tax Commission of Ohio, be the chief assessing officers of their respective counties, and shall list and value real and personal property for taxation, within and for their respective counties, except as may be otherwise provided by law. There shall also be in each county, a board to hear complaints and revise assessments of real and personal property for taxation, which shall be known as the county board of revision."